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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,404

12/30/2003

Cindy L. Price

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4673

757 7590 04/12/2007  
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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/750,404	Applicant(s) PRICE ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-9 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Election/Restrictions*

1. Claim 7 remains withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 7-24-06.

### *Specification*

#### *Drawings*

2. The drawings were received on 1-22-07. These drawings are approved. However, note the discussion infra with regard to Figure 1 and the support for the added claim language.

### *Description*

3. The disclosure is objected to because of the following informalities: On page 13, line 11, after "88 and 90", --and 92 and 94, respectively,-- should still be inserted.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

4. Claims 1-6, 8-9 and 42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

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claimed invention. Claims 1 and 42 now require the body faceable layer to include at least one aperture having a length at least one third of a length of the extensible body faceable layer.

Applicant relies upon Figure 1 for support of such amendment. However, not only has Figure 1 not been described as being to scale (It is noted that the scale of the Figure 1 filed 1-22-07 is not the same as that originally filed), but, regardless, such does not support at least one aperture, e.g. one, two, three, etc., having a length at least one third, i.e. any value one third or greater, e.g. any value from 33.3% to 100%, of a length, i.e. some length which could be, but does not necessarily have to be, the entire length of the body faceable layer, as is now claimed. If Applicant maintains such claim language the support for the entire scope of the entire combination of each of the claims in a single embodiment should be set forth. See MPEP 714.02, second to last paragraph and Claim Language Interpretation section supra.

### ***Claim Language Interpretation***

5. The claim terminology is interpreted in light of the definitions on page 5, lines 15-30, page 6, lines 1-2, 10-11 and 23-28 and page 7, lines 6-9. Any other terminology not specifically defined will be given its usual, i.e. dictionary, definition. With regard to claims 1-6, 8-9 and 42 and the issue set forth in paragraph 4 supra, see MPEP 2163.06, I.

### ***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-6, 8-9 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Doak et al '633.

Claims 1-6, 8-9 and 42: See Claim Language Interpretation section supra, and '633 at the Figures, especially Figures 1, 3 and 8, col. 1, line 44-col. 2, line 47 (and thereby '786, discussed infra), col. 5, lines 46-59, col. 6, lines 27-34, col. 7, lines 27-36, the paragraph bridging cols. 4-5, col. 15, lines 10-56 (i.e. window 53 can be same length as core), col. 16, lines 22-43 (window '53 in topsheet can be same size and shape or larger and of different shape than window 53), col. 19, lines 10-24 and, by incorporation, PCT '786 at the Figures, especially Figures 3, 5, 7, 17A, 20, 23B, page 1, first full paragraph, page 8, third full paragraph, page 9, second full paragraph, page 10, first two full paragraphs, page 11, line 1-page 13, line 6, especially page 11, third to last line-page 12, line 1, page 15, last paragraph, first sentence thereof, page 31, second and third full paragraphs, (and thereby '726, discussed infra), page 48, lines 23-27, page 49, second full paragraph and the Examples on pages 63-71, especially the pad and core lengths set forth therein which core length is at least one third the length of the pad, i.e. '633, and thereby, by incorporation, '786 teaches a "customizable", see again the Claim Language Interpretation section supra, i.e. user alterable, and page 1, first full paragraph and page 11, third to last line a- page 12, line 1 of '786, absorbent article comprising an extensible body facing layer 38 having a first end and a second end spaced along a longitudinal axis L which is extensible along the longitudinal axis, an extensible garment facing layer, e.g. 38, see discussion of claims 8-9 infra, or 40, having a first end and a second end spaced along the longitudinal axis L which is extensible along the longitudinal axis, and a non-extensible absorbent core 42 disposed therebetween which absorbent core is affixed, i.e. directly or indirectly, see, e.g., page 31, second

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and third full paragraphs of '786, and thereby, by incorporation, PCT '726, or page 49, second full paragraph of '786, to at least one of the facing layers at at least one location between said first and second ends.

Claim 1 now further requires the body faceable layer include at least one aperture having a length at least one third of a length of the body faceable layer. See again the portions of '633 and '786 cited supra, esp. the window 53' in Figure 8, col. 16, lines 22-43, esp. lines 26-28, col. 15, lines 13-56, esp. lines 20-21, Figures 1 and 3, esp. the length of the topsheet 38 relative to the entire pad, the paragraph bridging cols. 4-5, esp. col. 5, lines 1-4, and col. 7, lines 27-36, esp. lines 27-29, of '633 and '786 at the Examples of pages 63-71, e.g. not only is the window 53' shown extending into the end zones of the napkin, which end zones are described as being spaced apart about 1/3 of the length of the napkin, but the body faceable layer 38 extends the entire length of the pad, the length of the core is at least one third the length of the pad, see specifics lengths set forth in the Examples, and the window 53' can be the same size or larger than the window 53 which window 53 can be the length of the core. Therefore, '633 explicitly teaches at least one aperture having a length at least one third of the entire length of the body faceable layer '633 or provides sufficient factual for one to conclude that at least one aperture has a length at least one third of the entire length of the body faceable layer. Note MPEP 2112.01. It is noted, however, that the claim only requires that the aperture have a length at least one third of a length of the body faceable layer, i.e. does not require the entire length.

Claim 2: The at least one aperture therein, exposes a surge layer, 44, see portions cited supra of '633 and '786 and col. 11, line 5-col. 15, line 12 thereof, disposed between the facing layers to a body of a user.

Claims 3-5: The garment facing layer further comprises a releasable attachment component, see '786 at 44 in Figure 3 and page 52, line 15-page 57, line 2, i.e. discrete areas of mechanical fastener disposed at said first and second ends of the garment-facing layer or in a pattern on the garment-facing layer.

Claim 6: The absorbent core is anchored, i.e. directly or indirectly, to at least the garment facing layer by bonds 72 as seen in Figure 7 of '786 which can be formed by heat and pressure bonds, i.e. embossing, see again page 31, second and third full paragraphs and thereby, by incorporation, PCT '726 at page 24, last full paragraph. It is noted that this claim recites a product by process, i.e. "by embossing". See MPEP 2113, i.e. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." The end product of '633 is the same as the claimed product by process.

Claims 8-9: The body facing layer and garment facing layer are comprised of a single piece of extensible material 38 encasing the absorbent core or are individual sheets of extensible material 38, 40 attached to one another along outer peripheries thereof, see Figures 1-3 of '633 and '786 and col. 19, lines 1-24 of '633 and page 51, line 12-page 52, line 14 of '786.

Claim 42: '633 either teaches the method as claimed in claim 42, see discussion of claims supra, especially page 11, third to last line -page 12, line 1 and page 1, first full paragraph, again, or since the prior art '633 device is the same as a device described in the specification for carrying out the claimed method, there is sufficient factual evidence for one to

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conclude that such device will inherently perform the claimed process, see MPEP 2112.02 (i.e. under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device).

### ***Response to Arguments***

8. Applicant's remarks have been considered but are either deemed moot in that the issue argued has not been reraised or are deemed not persuasive for the reasons set forth supra.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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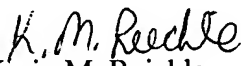
Any new grounds of rejection were necessitated by the amendments to claims 1, 2 and 42.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
April 3, 2007